



09 FEB 2007

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In re Application of LI et al :
U.S. Application No.: 10/540,908 :
PCT Application No.: PCT/CN2003/000095 :
Int. Filing Date: 28 January 2003 : DECISION
Priority Date Claimed: 27 December 2002 :
Attorney Docket No.: 13369701-0001 :
For: TRIPTOLIDE DERIVATIVES AND THEIR :
USE :

This is in response to applicant's "Petition to Withdraw Holding of Abandonment Under 37 CFR §1.137(a) and §1.181" filed 29 January 2007.

BACKGROUND

On 28 January 2003, applicant filed international application PCT/CN2003/000095, which claimed priority of an earlier China application filed 27 December 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 15 July 2004. The thirty-month period for paying the basic national fee in the United States expired on 27 June 2005.

On 27 June 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 12 January 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 13 March 2006, applicant purportedly filed an executed declaration.

On 27 December 2006, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned for failure to timely respond to the Notification of Missing Requirements.

On 29 January 2007, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

A review of the application file reveals that the declaration purportedly filed on 13 March 2006 is not present.

MPEP 503 states,

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. . . . The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. The identifying data on the postcard should be so complete as to clearly identify the item for which a receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application). The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.

A review of the postcard receipt filed with the present petition reveals that a document entitled "Response to Notification of Missing Requirements Under 35 USC 371 in the U.S. Designated/Elected Office-Submission of Executed Declaration (2 pgs)" is listed in the itemized contents. A copy of this document has been supplied with the petition. However, the declaration itself, which consists of 3 pages, is not listed in the itemized contents. Thus, the postcard receipt does not serve as *prima facie* evidence of receipt of the declaration.

Applicant may wish to make a showing under 37 CFR 1.8(b). Applicant is advised that the statement referred to in 37 CFR 1.8(b)(3) must be signed by the person who actually mailed the correspondence.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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